THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18328 of 1997

Dated: 01.3.2007

Between:

S.Balaswamy.

… Petitioner

AND

Government of A.P., rep by
Secretary, Agriculture and Co-op Dept,
Hyderabad.

And others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.18328 of 1996

ORDER:

This writ petition is filed for a writ of mandamus to declare the order of the third respondent dated 28.7.1997 whereby services of the petitioner as watchman were terminated as illegal, arbitrary, discriminatory and offending Article 14 and 21 of the Constitution of India.

The facts, which are not in dispute, are that the petitioner is a physically handicapped person and he holds an evaluation certificate issued by the Superintendent, Directorate General of Employment and Training, Ministry of Labour, Government of India dated 5.12.1977. The petitioner was appointed as watchman on casual basis in the A.P. College of Agriculture against physically handicapped quota on 23.6.1977. Petitioner made several representations to respondents 2 and 3 for regularization of his services in 3% vacancies reserved for physically handicapped quota in terms of proceedings No.811/SC/86 dated 14.7.1986 and ultimately considering his representation the third respondent issued proceedings in R.O.C.No.MDS/635/95 dated 11.7.1995 wherein the petitioner along with others was appointed temporarily as Watchman (physically handicapped) and posted at College of Agriculture, Rajendernagar in the existing vacancy. The petitioner had been working as watchman on the strength of the said

appointment order since then.

The third respondent issued proceedings dated 26.6.1996 wherein the regular appointment of the petitioner was cancelled forthwith but however, it was stated therein that the petitioner will be allowed to work as casual labour and that he will be given a chance in future as and when his turn comes for being considered for appointment on regular basis. It is mentioned in the said order that the 4th respondent who was also working as casual watchman also belongs to physically handicapped quota and that he represented to the university and filed W.P.No.5470 of 1996 in which orders were issued. Questioning the said order the petitioner filed W.P.No.14469 of 1996. This Court initially suspended the said order and eventually disposed of the writ petition on 23.7.1996. In the said order this Court has taken notice of the fact that the petitioner was not given any notice or afforded an opportunity before his services were terminated. Therefore, the order of termination of petitioner's services on regular basis was set aside and the respondents 2 and 3 therein were directed to afford adequate opportunity to the petitioner and pass orders in accordance with law. Purporting to act on the said order, the third respondent issued show cause notice dated 28.6.1997 calling upon the petitioner to show cause why the earlier order of appointment issued in his favour shall not be cancelled. The petitioner filed a reply to the said show cause notice. In the reply the petitioner stated that he is not a party to the writ petition filed by respondent No.4 and that at any rate the High Court has not given any direction to revert the petitioner. He also referred to the order passed by this Court in W.P.No.14469 of 1996 filed by him. The petitioner further submitted that though respondent No.4 joined the respondent No.3 College as casual labour in 1977 he left but was readmitted on humanitarian

grounds. The petitioner therefore termed the proposal to cancel his regular appointment as unjust and arbitrary. However, the third respondent issued the proceedings impugned in this writ petition wherein the order of regular appointment made in favour of the petitioner was cancelled. This order is assailed in the present writ petition.

A counter affidavit is filed by Dr.V.Prabhakar Rao, Registrar of Acharya N.G.Ranga Agricultural University, Rajendranagar. It is apposite to extract para-6 of the said counter affidavit:

> " Accordingly Mr.Sailoo made a representation to the Registrar, Andhra Pradesh Agricultural University on 30.4.1996. On the representation the Registrar, Andhra Pradesh Agricultural University has requested for the remarks of Principal, College of Agriculture, Rajendranagar who is the appointing authority to the Class-IV posts vide M.No.22171/Lab/96, dated 18.5.1996. The Principal, College of Agriculture Rajendernagar through his Lr.No.FDS/685/95 dated 21.5.1996 has offered his remarks. Through M.No.22171/Lab/96, dated 24.6.1996, the Principal, College of Agriculture , Rajendernagar was requested to issue one month notice to the petitioner for canceling his appointment as his senior sought justice through court of law. Hence notice was issued to the petitioner. A copy of seniority list is enclosed as annexure-I to this counter. As can be seen from the seniority list Sri N.Sailoo is as S.No.137 and where as the petitioner is at Sl.No.138. Thus the petitioner is junior to Sri N.Sailoo who is working as casual watchman on daily wages has represented to the authorities of Agriculture collage, Rajendernagar through Farm Superintendant, College of Farm, Rajendranagar vide Endt.No.270/CF/95, dated 17.7.1995 along with physical handicapped certificate issued by the Civil Surgeon, Gandhi Hospital, Secunderabad dated 1.12.1987 wherein it is mentioned that 'Matunited Trochanrene fracture right limb shortening" received in this college on 18.7.1995 and requested to make necessary entries against his name in the seniority list of the casual labourers. Copy of his application along with physically handicapped certificate is enclosed as annexure-II to the counter. Prior to his

representation neither the Principal Agriculture College who is the appointing authority had any information that Sri N.Sailoo casual watchman is a physically handicapped employee nor the farm superintendent, under whom he is working had any information. In the writ petition Sri N.Sailoo has admitted on his own that he has not approached the authorities in this regard earlier. From the certificate now submitted by him it is evident that he had a fracture on his leg and has undergone treatment in the said hospital. He obtained the certificate in December, 1987. since then and till the appointments were made to certain Class-IV posts in the college unit among the casual labourers i.e., 11.7.1995 he has not submitted any certificate for incorporation of his name in the physically handicapped category list."

Though notices were served on respondent No.4 no appearance is entered on his behalf nor any counter affidavit has been filed by him. A reading of the impugned order shows that after the petitioner was appointed on regular basis on 11.7.1995 and the petitioner has joined in pursuance of the said order on 12.7.1995, the fourth respondent made a representation on 15.7.1995 stating that as he belongs to physically handicapped category as evident from the certificate (which was received by the office of third respondent on 19.7.1997) he is entitled to be appointed to Class-IV category and that he filed a representation wherein he expressed a grievance that the petitioner was appointed ignoring his seniority under physically handicapped quota. The order then referred to the show cause notice issued to the petitioner. It has also taken note of the directions of this Court in the writ petition filed by respondent No.4. In the penultimate paragraph of the order it is mentioned that the explanation offered by the petitioner is not satisfactory and that his contention that he is senior to N.Sailoo is not correct. On these grounds the proceedings, which were issued earlier in favour of the petitioner, were cancelled.

Sri P.Sridhar Reddy, learned counsel for the petitioner submitted

that the impugned order was passed overlooking the main fact that the 4th respondent never registered himself under the physically handicapped quota till the petitioner was appointed and has joined the duty. Having failed to register himself under the said quota, it is not open to respondent No.4 to make a grievance of the petitioner's appointment and equally to respondents 1 to 3 to set aside the order already issued in favour of the petitioner, to facilitate the appointment of respondent No.4.

Per contra, the learned counsel representing Sri B.V.Siva Reddy appearing for A.P.Agricultural University submitted that since the respondent No.4 is senior to the petitioner, the petitioner's appointment issued earlier was cancelled and that the said order does not call for any interference.

In para-6 of the counter affidavit filed on behalf of respondents 1 to 3 the respondents have in fact admitted that respondent No.4 has not submitted any certificate for incorporation of his name in the physically handicapped category list till petitioner's case was considered and he was appointed. Even if the seniority of physically handicapped quota is to be prepared and appointments made strictly in accordance with the said quota, on the own showing of the university, the respondent No.4 never figured in the list of physically handicapped category for the reason that he has not got his name incorporated under the said category. I am therefore of the view that it is not open to the respondents 1 to 3 to reopen the appointments already made and provide employment to respondent No.4 in place of petitioner, even assuming that respondent No.4 was senior in the category of casual labour to the petitioner. Respondent No.4 was evidently not diligent enough to get his name registered under the physically handicapped category with the first respondent university.

Merely because he has woken up after the petitioner was appointed, there is no warrant for respondents 1 to 3 to reopen the appointment already made to facilitate the appointment of respondent No.4. This action on the part of respondents 1 to 3 constitutes a highly arbitrary action violating article 14 of the Constitution of India. In all fairness respondents 1 to 3 ought to have considered the case of respondent No.4 in his turn after his name is duly incorporated under the physically handicapped category. The respondents 1 to 3 had failed to consider that respondent No.4 being indolent had missed the bus when the petitioner's case was considered and was appointed.

The action of respondents 1 to 3 in displacing the petitioner in order to make way for the appointment of respondent No.4 is wholly unfair, to say the least. The petitioner is unjustly denied the appointment already given to him and the order impugned in this writ petition is therefore, liable to be set aside and is accordingly set aside. It is needless to say that the petitioner is entitled to all the consequential benefits, and is entitled to be treated as working on regular basis in terms of order of appointment dated 11.7.1995. Subject to the above direction, the writ petition is allowed.

Dt:01.3.2007.

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C.V.NAGARJUNA REDDY,J

Note;
Issue c.c. in one week.

B/o.

Mdaa.